UNITED STATES DISTRICT COURT	EASTERN DISTRICT OF TEXAS
ANDREW BURKE,	§ .
Petitioner,	9 § 8
versus	§ CIVIL ACTION NO. 9:24-CV-73
DIRECTOR, TDCJ-ID,	8 8 8
Respondent.	§ §

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Andrew Burke, an inmate confined within the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges a prison disciplinary conviction.

The court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of the court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge recommending the petition be denied.

The court has received the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. Petitioner filed objections to the Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. After careful consideration, the court is of the opinion the objections are without merit. Inmates charged with prison disciplinary offenses are entitled to certain procedural safeguards when the punishment imposed implicates a protected liberty interest. *Sandin v. Connor*, 515 U.S. 472, 483-84 (1995). Petitioner did not lose good conduct time credits as a result of the disciplinary conviction. As a result, the magistrate judge correctly concluded the punishment petitioner received did not implicate a protected liberty interest and that he was therefore not entitled to any procedural safeguards.

ORDER

Accordingly, petitioner's objections (#5) are OVERRULED. The findings of fact and

conclusions of law of the magistrate judge are correct and the report of the magistrate judge (#4)

is **ADOPTED**. A final judgment will be entered denying the petition.

Furthermore, the court is of the opinion petitioner is not entitled to a certificate of

appealability. An appeal from a final judgment denying habeas relief may not proceed unless a

judge issues a certificate of appealability. See 28 U.S.C. § 2253. The standard for a certificate

of appealability requires the petitioner to make a substantial showing of the denial of a federal

constitutional right. See Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). In order to make a

substantial showing, the petitioner need not establish that he would prevail on the merits. Rather,

he must demonstrate that the issues raised in the petition are subject to debate among jurists of

reason, that a court could resolve the issues in a different manner, or that the questions presented

are worthy of encouragement to proceed further. See Slack, 529 U.S. at 483-84. Any doubt

regarding whether to grant a certificate of appealability should be resolved in favor of the

petitioner, and the severity of the penalty may be considered in making this determination. See

Miller v. Johnson, 200 F.3d 274, 280-81 (5th Cir. 2000).

In this case, the petitioner has not shown that the issues raised are subject to debate among

jurists of reason. The factual and legal questions raised by petitioner have been consistently

resolved adversely to his position and the questions presented are not worthy of encouragement

to proceed further. Petitioner has failed to make a sufficient showing to merit the issuance of a

certificate of appealability. Thus, a certificate of appealability will not be issued.

SIGNED at Beaumont, Texas, this 16th day of May, 2024.

MARCIA A. CRONE

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UNITED STATES DISTRICT JUDGE

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